

CHAPTER 65

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 17-1096

BY REPRESENTATIVE(S) Liston, Landgraf, Lawrence, Navarro, Sias, Becker K., Michaelson Jenet, Mitsch Bush;
also SENATOR(S) Smallwood, Gardner, Hill, Jahn, Neville T., Todd, Grantham.

AN ACT**CONCERNING ENDOWMENT CARE FUNDS ADMINISTERED FOR CEMETERY AUTHORITIES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 12-12-109, **amend** (7); and **add** (8) as follows:

12-12-109. Endowment care fund. (7) (a) The endowment care fund, for all purposes, shall constitute a nonprofit irrevocable trust fund. THE FIDUCIARY SHALL NOT DISTRIBUTE PRINCIPAL FROM AN ENDOWMENT CARE FUND; EXCEPT THAT PRINCIPAL MAY BE DISTRIBUTED FROM THE FUND TO THE EXTENT THAT A UNITRUST ELECTION IS IN EFFECT UNDER SUBSECTION (8)(a)(II) OF THIS SECTION.

(b) Endowment care is a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. The income ~~and increments and gains from such funds are~~ FROM THE FUND IS for the benefit of the public for the purposes provided for in ~~such trusts~~ THE TRUST AGREEMENT.

(8) (a) THE CEMETERY AUTHORITY OF AN ENDOWMENT CARE CEMETERY MAY CHOOSE THE DISTRIBUTION AS INCOME OF EITHER OF THE FOLLOWING FROM THE ENDOWMENT CARE FUND:

(I) ALL NET INCOME, INCLUDING NET REALIZED CAPITAL GAINS; OR

(II) AN AMOUNT SET AND ADMINISTERED IN ACCORDANCE WITH SECTION 15-1-404.5 FOR UNITRUST ELECTIONS.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b)(I) A CEMETERY AUTHORITY MAY REQUEST THAT THE FIDUCIARY CONVERT AN ENDOWMENT CARE FUND TO A UNITRUST. TO TAKE EFFECT DURING A SPECIFIC CALENDAR YEAR, THE REQUEST MUST BE MADE BY DELIVERING WRITTEN INSTRUCTIONS TO THE FUND'S FIDUCIARY BY NOVEMBER 2 OF THE YEAR BEFORE THE TRUST IS CONVERTED. ONCE THE FIDUCIARY AND THE CEMETERY AUTHORITY AGREE ON THE TERMS AND CONDITIONS OF CONVERSION, THE DISTRIBUTION METHOD, AND THE DISTRIBUTION RATE, THESE TERMS REMAIN IN EFFECT UNTIL THE FIDUCIARY AND THE CEMETERY AUTHORITY AGREE TO A CHANGE.

(II) DISBURSEMENTS FROM THE TRUST SHALL BE MADE ON A MONTHLY, QUARTERLY, SEMI-ANNUAL, OR ANNUAL BASIS, AS AGREED UPON BY THE CEMETERY AUTHORITY AND THE FIDUCIARY. IF THE FIDUCIARY AND CEMETERY AUTHORITY ARE IN AGREEMENT, THE FIDUCIARY NEED NOT OBTAIN ANY COURT APPROVAL OR NOTIFY A COURT TO SET OR CHANGE THE TIMING OF DISBURSEMENTS.

(III) THE FIDUCIARY IS SUBJECT TO SECTION 15-1-404.5 WHEN ADMINISTERING AN ENDOWMENT CARE FUND FOR WHICH THE UNITRUST ELECTION HAS BEEN MADE; EXCEPT THAT, IN THE EVENT OF A CONFLICT BETWEEN THIS SECTION AND SECTION 15-1-404.5, THIS SECTION CONTROLS.

(c) IF THE FIDUCIARY DOES NOT RECEIVE WRITTEN INSTRUCTIONS FROM THE CEMETERY AUTHORITY INFORMING THE FIDUCIARY OF THE METHOD OF INCOME DISTRIBUTION CHOSEN, THEN THE FIDUCIARY SHALL CALCULATE AND DISBURSE THE EARNED NET INCOME UNDER SUBSECTION (8)(a)(I) OF THIS SECTION ON A MONTHLY BASIS.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 20, 2017